IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1258 OF 2005

Milind Shinde (deceased) through Legal Heirs Mrs.Kanchan Milind Shinde and Ors. .. Petitioners

Versus

Ramchandra Baburao Pasalkar .. Respondent

Mr.S.J.Rairkar for petitioners

Mr.V.G.Mujumdar for respondent.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 26th November 2007

P.C.

. Perused the interim order passed by the Trial Court and the order of lower appellate

court so also the sale deed with recitals.

2. The petitioners original plaintiffs in Regular Civil Suit No.626 of 2003 are impugning an order dated 29th October 2004 in the Misc.Civil Application No.261 of 2003 confirming that of the Trial Court.

3. In the facts and circumstances of the present case, when the sale deed recites factum of possession from 1980, the Courts below were right in restricting the injunction in favour of petitioner to the extent indicated in the impugned order.

4. In my view, it is not for this Court nor for the court below at this stage to pronounce upon legality and validity of the sale deed. That is an issue which will arise during the course of proceedings and must be answered independent of the observations in the interim

orders. At this stage, together with other materials, reliance can be placed upon the recitals in the agreement rather than the version of respondent before me.

5. On the basis of the materials produced it cannot be, prima facie, concluded that the petitioners were in exclusive possession of the suit property. Consequently, the orders under challenge are not vitiated by any error apparent on the face of record or can be termed as perverse so as to call for interference under Article 227 of the Constitution of India. Petition dismissed.

(S.C.Dharmadhikari, J)